IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 593 OF 2007.
IN
SUIT NO.1795 OF 1986.

Hoshi K. Siganporia. ... Plaintiff.
Versus.
The Central Bank of India. ... Defendant.

Smt.Bindu S.Panicker i/by Shri Ajay Panicker for the Plaintiff.

Shri V.K.Nair i/by M/s.Little & Co. for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 27th July, 2007.

P.C.:

1. Heard the learned Counsel appearing for the Plaintiff in support of the Chamber Summons. I have also heard the learned Counsel appearing for the Defendant.

2. The following are the prayers made in the Chamber Summons:

(a) That the Plaintiffs be allowed to tender and rely upon additional affidavit of evidence of the Plaintiff's witness Mr.Keki Singanporia with further documents in the above suit.

(b) That this Hon'ble Court be pleased to

allow the Plaintiffs to lead the secondary evidence in respect of the documents described in Schedule-I hereto.

The Plaintiff has already filed an affidavit of examination-in-chief. This Court appointed an Advocate as the Court Commissioner for recording cross examination of the witness. The report of the Court Commissioner dated 29th March 2007 submitted to this Court discloses that on 8th March 2007, the Plaintiff made an attempt to tender further affidavit of evidence with some documents. The Commissioner directed the parties to approach this Court for seeking necessary relief and accordingly the present Chamber Summons has been taken out.

3. According to the case of the Plaintiff, he desires to produce 9 documents, the description of which is given in Schedule I annexed to the Chamber Summons. The learned Counsel for the Plaintiff stated that the Plaintiff desires to lead secondary evidence of the said 9 documents and therefore, at present the Plaintiff desires to produce the copies of the said documents along with an additional affidavit. The learned Counsel for the Plaintiff stated that the further affidavit of examination-in-chief is only for the purpose of deposing

on the said 9 documents.

4. In paragraph 10 of the affidavit in support, the Plaintiff has alleged that the documents at Sr.No.1, 8 and 9 are the letters addressed, written and sent to Defendant-Bank and therefore, the same are in possession of the Defendant. It is stated that the documents at Sr.No.2 to 7 are the letters and notices sent by the then Advocate for the Plaintiff to the Defendant-Bank and the said documents are in possession of the Defendant-Bank. The Plaintiff is seeking to produce secondary evidence of the said documents. Thus the case made out by the Plaintiff is governed by clause (a) of section 65 of the Indian Evidence Act, 1872. In view of section 66 of the said Act, secondary evidence of the contents of the documents covered by clause (a) of section 65 of the said Act shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, such notice to produce it as is prescribed by law and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case. There is nothing on record to show that such a notice to produce was issued by the Plaintiff. Therefore, the application of the Plaintiff for grant of permission to lead secondary

evidence cannot be considered unless compliance is made with the provisions of law as aforesaid. Therefore, as of today the permission cannot be granted to the Plaintiff to lead secondary evidence of the documents listed in Schedule-I of the Chamber Summons. The Plaintiff can always comply with the requirement of law and file a fresh application for seeking such a relief. As permission to lead secondary evidence cannot be granted, no purpose will be served by permitting the Plaintiff to file additional affidavit of examination-in-chief for bringing those documents on record.

5. Hence Chamber Summons is dismissed with liberty to the Plaintiff to file a fresh Chamber Summons for the same relief after compliance is made by the Plaintiff with the provisions of the Indian Evidence Act, 1872.

6. Certified copy is expedited.

Judge.